IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Summons for Judgment No. 883 of 2004
in
Summ. Suit No. 1891 of 2004

Lalit Sanghvi ..Plaintiff

vs.

M/s Ravi Frozen Foods Ltd.
and anr. ..Defendants

Mr.Kishor Jain with Mr.Tushar Goradia i/b Mehta Girdharlal for plaintiff.

Mr.Shekhar Shette i/b M/s B.Amin and Co. for defendants.

CORAM: S.U.KAMDAR J.
5th OCTOBER, 2005

P.C.

. Learned Counsel appearing for the plaintiff states that he is restricting the claim of interest only from the date of promissory note and giving up the claim of interest which is prior to the date of promissory note. He also, on instructions, states that as far as defendant no.2 is concerned, he is not pressing the suit against defendant no.2 and seeks leave to delete the name of defendant no.2 from the suit in view of the fact that the promissory notes are executed by defendant no.2 in the capacity of the Director of defendant no.1. In view thereof the name of defendant no.2 is directed

to be deleted.

2. Learned counsel for the plaintiff also accepts that after taking out the summons for judgment the defendants have paid the amount of 4,75,000/- and, therefore, he undertakes to the amend the plaint suitably to reduce the claim by giving credit of Rs.4,75,000/- and reducing the interest from the date of promissory note. Amendment to be carried out within one week from today.

3. In so far as the claim on merits is concerned, the learned counsel for the defendant has resisted the claim under the said 3 promissory notes firstly on the ground that the claim is barred by law of limitation. I do not find any merit therein because the first promissory note is dated 30th June, 2001 and second and third promissory notes are dated 15th July, 2001 and 31st July, 2001 respectively. The suit is lodged in this Court on 29th June, 2004 and, therefore, the suit is within time. The next contention raised by the learned Counsel for the defendant is that the claim under the promissory notes is not enforceable unless the claim is proved because according to him, such a claim is the claim for damages. He relied upon the letter dated 20th December, 2001 of the defendants

annexed at Exh.A to the plaint and contended that the said letter makes it clear that the promissory notes were executed for the claim of damages for the breach of agreement by defendant no.1 company. He further contends that it is settled law that the claim for damages unless it is proved by the party suffering from the damages cannot be accepted by the Court. In support of the aforesaid contention he relied on section 74 of the Contract Act as well as the judgment of the learned single Judge of this Court in the case of Oil and Natural Gas Commission Vs.Macqreqor-Navire Port Equipment, Mumbai reported 2002(3) Mh.L.J. 313. It has been contended by relying upon the aforesaid judgment that at the highest the amount mentioned in the promissory notes is mere estimation for the claim of damages and unless the claim is proved by the plaintiff the plaintiff is not entitled to the decree for the claim for damages. It has been contended that thus this Court cannot pass any order under Order XXXVII Rule 2 unless the claim is tried and proved by the plaintiff and, therefore, triable issue arises. In my opinion, the aforesaid contention of the learned counsel for the defendants is without any merit. The law as to the damages is well settled that even if it is liquidated claim specified in the contract then also under sec.74 unless the claim is proved

the same cannot be awarded because the liquidated damages is preestimation of the damages which is likely to take place if there is any breach of the contract and such a pre-estimation has been done at the time when the contract itself is executed. In the present case, the contract has already been executed much prior to the letter dated 20th December, 2001 and breach thereof is also prior thereto. By letter dated 20th December, 2001, the party admits its liability to pay the said amount as due and payable towards the claim for damages. By executing three promissory notes the defendant gave an unequivocal promise to pay the said amount without any question and without any challenge and on demand. The law as to negotiable instrument is well settled on execution of the same consideration thereunder is presumed. Once the defendants themselves have accepted the liability towards the claim for damages including the quantum thereof by execution of the promissory notes, the question thereafter of proving the claim for damages does not arise. In that view of the matter I do not find any substance in the contentions raised by the defendant in the present case. However, with a view to give an opportunity to defend the suit on the condition that the defendant deposits in this Court a sum of Rs.30,00,000/- within a period of

four weeks failing which the plaintiffs will be entitled to a decree. The amount so deposited will be invested by the Prothonotary and Sr.Master in fixed deposits of any nationalised bank initially for a period of 3 years and renew the same from time to time till further order.

4. If the amount is paid as aforestated, then the suit be transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from the date of deposit. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be placed on board of the learned Judge taking Commercial Causes.

5. Summons for Judgment is disposed of accordingly.